

September 3, 2008

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RE: Revisions to the NMB Representation Manual – Comments of
the Airline Industrial Relations Conference

Dear Ms. Johnson:

This letter is submitted on behalf of the Airline Industrial Relations Conference (AIR Conference) in response to your July 15th request for comments on the Board's proposed revisions to seven sections of the Board's Representation Manual.

AIR Conference recognizes that the Board issued the proposed revisions in an effort to clarify possible ambiguities in various sections of the Representation Manual. Mindful of the goal of "clarifying" Board policies, AIR Conference respectfully offers the following comments.

Section 2.4 List of Potential Eligible Voters and Signature Samples

The Board has proposed revising Section 2.4 to include a new provision:

"The carrier's failure to provide a *substantially accurate* list of potential eligible voters may be considered interference with the NMB's election process and therefore grounds for setting aside the election." (emphasis supplied)

The proposed phraseology raises the question of what "substantially accurate" means. There have certainly been representation proceedings

where the carrier has omitted or included individuals by mistake. Given the large number of employees eligible to vote in some recent air carrier representation cases – upwards of 10,000 – errors on an eligibility list are inevitable and unavoidable. Sometimes these mistakes involve multiple individuals and take multiple iterations to correct. In addition, the carrier may be unable to provide a “signature exemplar” within the time deadline due to technological mishaps and/or inability to capture, store, and reproduce signatures accurately.

Accordingly, we would urge that the NMB clarify that this revision is meant to address only circumstances where there is an intentional effort to mislead the Board and the union about the content or size of the carrier’s eligibility list. We would suggest that the Board revise the proposed paragraph as follows:

“The carrier’s failure to provide a substantially accurate list of potential voters, **in circumstances evidencing intent to mislead the Investigator**, may be considered interference with the NMB’s election process and therefore grounds for setting aside the election.”

Section 9.2 Eligibility - Trainees

In the proposed new Section 9.2, the Board has included a new paragraph containing extensive new language regarding the eligibility of trainees to vote. AIR Conference’s members would offer the following perspectives on the trainee proposal:

First, eligibility challenges based on whether a new employee is still in some phase of training are often fact intensive and best resolved on an individual employee basis.

Second, there is extensive NMB caselaw on the criteria that the Board uses to classify an employee as a “trainee.” The proposed paragraph adds little to the caselaw, and is therefore unlikely to diminish union challenges to eligibility based on the trainee argument.

Third, the Board investigators have historically been quite strict about the format of the Eligible Voters list that the carrier submits. The mandated list must be prepared in Excel with only certain specified fields: Number, Last Name, First Name, Job Title, and Duty Station. To satisfy the Board’s

proposal, the carrier would need to either add an extra field on the Excel list, or identify the alleged trainees in a separate document, such as a cover letter accompanying the list. Either way, the net result would be to create another “hoop” through which the carrier must jump in the course of preparing the time sensitive eligibility list.

In short, the proposed paragraph on trainees is unlikely to reduce challenges to the eligibility list, while potentially complicating the preparation of the list. Therefore, AIR Conference urges the Board to withdraw the proposed paragraph on trainees in Section 9.2.

Section 9.205 Leave of Absence

The Board proposes changing the eligibility standards for employees on leave of absence. Under the current section 9.205, employees on authorized leaves of absence, including military leave, leave for labor organization activities, or authorized sick leave **are eligible** to vote.

The current standard of automatic eligibility for employees on authorized leave distinguishes them from employees on disability, who are only eligible if “they retain an employee-employer relationship and have a reasonable expectation of returning to work.” The proposed revision would apply the two part “relationship,” and “reasonable expectation” test to all employees on authorized leave.

AIR Conference’s members are opposed to this change. Employees on authorized leaves of absence should be given every benefit of the doubt and not required to pass any test for eligibility to vote. Unlike employees who are out on disability because they are incapable of performing their jobs, many employees on authorized leaves of absence are fully capable of performing their jobs – but excused from doing so because of other commitments, such as to the military. Further, some employees on sick leave continue to be paid by their carrier, as do many employees on union leave, albeit with the union then compensating the carrier for the payroll costs.

Moreover, it is arguably redundant to require an employee on “authorized leave of absence” to “retain an employee-employer relationship,” given that an *authorized* leave presupposes that such a relationship still exists and the employee will be returning to work at the end of the leave.

Sections 19.701 Status of Representation Certifications

The Board proposes to add a new Section 19.701, which formally recites the Board's existing, standard practice with regard to extending union certifications following the mergers of two carriers. To ensure there is no confusion as to its application, AIR Conference recommends that the Board revise proposed Section 19.701 to show that it would apply to (a) mergers where the craft or class on both carriers has certified union representatives, as well as (b) mergers where certified union representation exists on only one of the carriers.

Accordingly, AIR Conference urges that the proposed 19.701 be restated as follows:

Where there is a certified representative on one or more of the affected carriers [~~delete: but no certified representative on the other(s)~~], the Board will exercise its discretion and extend the certification only where there is more than a substantial majority, as determined by the Board. Authorization cards may be used to supplement the showing of interest necessary to trigger an election; they may not be used toward getting a certification extended. Nothing, however, in this Section precludes certification by check of authorizations as governed by Manual Section 7.0 or the opportunity for voluntary recognition.

Respectfully submitted,

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Vice President, General Counsel
& Treasurer